UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

THE REYNOLDS & REYNOLDS COMPANY
 	
        Plaintiff,
 	
vs.
 	
SUPERIOR INTEGRATED SOLUTIONS, INC.
 	
        Defendant.
	Case No. 1:12-cv-00848
	
	District Judge Thomas M. Rose

DECLARATION OF KELLY HALL

1. My name is Kelly Hall. I am of sound mind, capable of making this Declaration, and personally acquainted with the facts stated herein. I am the Vice President of Software Development for Reynolds & Reynolds Company ("Reynolds"), where I have been employed for the past 27 years. I have personal knowledge of the facts set forth herein, and they are true and correct.

2. Reynolds owns and operates a proprietary information management system for retail automotive dealers, known generally as a "Dealer Management System" or "DMS." The Reynolds DMS includes hardware and software applications that enable automobile dealers to manage inventories, customer contacts, financial and insurance information, transactional details, and other tasks involved in managing an auto dealership. Reynolds provides the DMS through direct contracts with the auto dealerships that use it. In addition, Reynolds maintains, at a significant expense, an extensive infrastructure to support its DMS customers. Reynolds' support structure includes on-going maintenance and security, help desk support, a well-trained sales force, and monitoring important federal and state legislation.

3. Reynolds vigorously competes with other DMS providers in the DMS market. At the end of 2009, Reynolds had 7,159 DMS customers compared to 5,562 DMS customers at the end of 2012. Reynolds' market share in the United States DMS market also decreased from 38.5% at the end of 2009 to less than 35% during this time period. In 2012, Reynolds lost 467 DMS customers to other DMS providers and 141 DMS customers left their DMS provider for Reynolds. There is likewise vigorous competition in the third-party application market.

4. Reynolds' primary DMS solution is called "ERA." Although there are a number of programs and files relevant to ERA, one important program is a Reynolds-authored "executable" known as ERAccess.exe. ERAccess is a terminal-emulator program that provides an individual dealership employee using a computer ("PC") at the dealership with encrypted, secure access to other Reynolds-licensed ERA applications, which in turn can access

dealership data residing on the dealership's ERA server. A dealership's ERA server is located physically at the individual dealership or in Reynolds' "cloud," which is maintained in Dayton, Ohio. ERAccess allows, for example, a dealership employee to input customer data into the ERA vehicle-service application where it is instantly available for display and editing by a different employee using ERAccess in the sales department.

5. Reynolds' auto-dealership customers input large amounts of their customers' personally identifiable information ("PII") as well as their own employee's PII into the various DMS applications they use for the various aspects of their business. Maintaining the security of PII and other confidential data is of critical importance to both auto dealerships and Reynolds. Thus when Reynolds develops, monitors, updates, and enhances its DMS and associated executables, securing PII and confidential data—along with enhancing productivity, performance, and functionality—is an important goal.

6. As a service to DMS customers, Reynolds provides integration of third-party applications to permit other application providers to integrate their applications onto the Reynolds DMS. By providing integration, Reynolds is better able to ensure that the security of the dealer's data as well as the performance and integrity of its DMS will not be adversely impacted through the use of these applications with the DMS.

7. Reynolds has provided integration services for third-party applications pursuant to the "Reynolds Certified Interface" or "RCI" program. Pursuant to the RCI program, third-party application providers can have Reynolds supported integration with Reynolds' DMS by completing the Reynolds certification process. Reynolds has entered into more than 26 interface agreements with third-party application providers since the end of 2009, including agreements with some of the biggest competitors and names in the industry such as J.D. Power & Associates, AutoTrader.com, and DealerTrack's eMenu. To date, 144 third-party application providers and 172 third-party applications have been certified by Reynolds or are in the certification process for use with ERA.

8. Superior Integrated Solutions, Inc.'s ("SIS") primary business model is to act as a middleman between Reynolds and third-party application providers and charge a fee to third-party application providers to integrate their applications with Reynolds' DMS. SIS has no license or right to do so from Reynolds. Integrators like SIS, who access and use the intellectual property of another without a license or contractual right to do so, are known in the auto industry as "hostile integrators."

9. In addition to impairing the functionality and performance of Reynolds' DMS, hostile integration can also undermine the security of data maintained at an individual auto dealership. Reynolds does not authorize or secure hostile-integrator access, nor does it have any way of ensuring that data transmitted to and from uncertified third-party applications is transmitted securely.

10. Reynolds' auto-dealership customers agree to prohibitions on hostile integration when they license from Reynolds its DMS solutions. When Reynolds' dealership customers sign up for ERA, Reynolds' customer agreements typically include at least an "Authorization Letter," a

"Master Agreement," and a "Customer Guide" (collectively, the "Reynolds Customer Agreement"). The relevant portions of the Customer Guide, along with a related glossary of "Defined Terms," are attached as Exhibits A-2 and A-3 to this Declaration respectively. The Master Agreement, which explains the incorporation of the Customer Guide and Defined Terms, is attached as Exhibit A-1.

11. Under the Reynolds Customer Agreement, customers agree to prohibitions on connecting third-party applications to ERA and on allowing third party integrators like SIS to interface with ERA. For example, Reynolds' customers agree that:

   (a) "Unless we provide otherwise, you may not install Other Matter on the Equipment or connect Other Matter to Licensed Matter, either directly or remotely, without our prior written consent." Ex. A-2 at 19. "Other Matter" is defined in the Reynolds Customer Agreement as "any software product, database, or other materials provided to you by a third party, which is capable of functioning on or with Equipment." Ex. A-3.

   (b) "You shall not . . . otherwise attempt to create or discover, by any means, . . . integration to other programs. . . ." Ex. A-2 at 21.

   (c) "You agree to keep confidential the Licensed Matter . . . and shall not . . . in any way disseminate or allow access to or by third parties." Ex. A-2 at 21.

   (d) "You agree . . . to maintain the Licensed Matter in complete confidence [and] not to disclose or provide access to any Licensed Matter . . . except your employees who have a need for access to operate your business. . . ." Ex. A-1 at 1.

12. As part of its ongoing efforts to improve performance, functionality, and security, Reynolds issues software updates and enhancements to its DMS and associated executables from time to time. When Reynolds issues such updates and enhancements, the installation process is automatic: updates are "pushed" from the ERA server to the relevant files and folders on individual dealership employees' computers, and outdated versions are overwritten as part of an update. One of the many consequences of these efforts can be the disabling of hostilely integrated code and/or software. Reynolds' updates and enhancements do not, however, directly remove hostile code and/or software from the dealership's computer unless the dealership provides Reynolds permission to do so.

13. Reynolds' auto-dealership customers authorize Reynolds to access their computers to issue ERA software updates. This process is authorized by the Reynolds Customer Agreement, which states:

   You . . . grant to us *the . . . right at all times to ACCESS* IN PERSON, BY TELPHONE LINE, OR OTHER MEANS OF COMMUNICATION, AS APPROPRIATE, *YOUR LICENSED MATTER, EQUIPMENT AND SYSTEM* . . . IN THE COURSE OF PROVIDING THE ITEMS AND PERFORMING THE SERVICES TO WHICH YOU HAVE CONSENTED:

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TO PERFORM EQUIPMENT MAINTENANCE, SOFTWARE SUPPORT SERVICES, **SOFTWARE UPDATES**, AND OTHER SERVICES ON YOUR BEHALF AS PROVIDED IN THE MASTER AGREEMENT OR THIS CUSTOMER GUIDE;

TO DIAGNOSE, MONITOR, AND OPTIMIZE THE PERFORMANCE OF SYSTEMS, SOFTWARE, AND NETWORKS;

See Ex. A-2 at 8-9 (emphasis added).

14. Reynolds' auto-dealership customers also agree to use the most current versions of ERA and ERAccess. Reynolds' customers agree that "If we . . . make an updated version of such Licensed Matter available, you agree to promptly load and thereafter exclusively use the updated version of such Licensed Matter." *See* A-2 at 24.

15. Reynolds' auto-dealership customers also authorize Reynolds to access their computers to issue "Enhancements," or "improvement[s] or modification[s]" to ERA and ERAccess. Reynolds customers agree to allow Reynolds to load Enhancements remotely, or alternately, to load the Enhancements themselves. The Reynolds Customer Agreement provides that:

> We will supply you with Enhancements that we generally distribute to our customers without charging an additional license fee. . . . Enhancements will either be loaded remotely by us, or you will promptly load all Enhancements delivered to you by us. *You are required to promptly load all Enhancements*, and will be subject to termination of Services if failure to do so means you are not on the most current version of the Licensed Software.

See Ex. A-2 at 15-16 (emphasis added). The Reynolds Customer Agreement is clear that third party software "may . . . be overlaid in functionality by functionality of those Enhancements." *See id.* at 16.

16. Except for the three-year time period during which the Reynolds Interface Agreement ("RIA") was in effect, SIS has been a hostile integrator with respect to Reynolds' DMS since approximately 1999. The RIA granted SIS limited rights to integrate third-party applications onto Reynolds' DMS from September 21, 2006 through September 21, 2009 and allowed SIS access to Reynolds' DMS.

17. Except for the three years the RIA was in effect, Reynolds has disabled applications hostilely integrated by SIS since 1999. The interplay between SIS's efforts to hostilely integrate third-party applications with Reynolds' DMS and Reynolds' responses to those efforts results in a sort of "cat and mouse" game that usually plays out as follows:

(a) To protect data, DMS functionality, and intellectual property, Reynolds designs its DMS solutions with features that "block" efforts to hostilely integrate uncertified third-party applications with Reynolds' DMS;

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(b) SIS designs integration code and/or software to navigate around the DMS's blocking features and enters into contracts with uncertified third-party-application providers to hostilely integrate applications with Reynolds' DMS;

(c) Reynolds discovers—typically in response to auto-dealership customer reports of DMS malfunctions—the hostile-integration method and issues software updates and security enhancements (or "patches") that can (and frequently do) disable hostile integration of third-party applications;

(d) When these updated software modifications and security enhancements cause SIS's integration software to fail, SIS endeavors to modify its software so that its integration solutions can navigate around Reynolds' modifications.

18. In August of 2012, certain Reynolds' auto-dealership customers began reporting automatic log-off problems with ERA to Reynolds. The customers reported that individual computers were logging off of ERA even when auto-dealership employees were using the software. At one customer's request, Reynolds remotely accessed an individual PC at the customer's auto dealership to investigate the problem. The customer authorized Reynolds' personnel to log onto an individual computer and Reynolds' personnel eventually identified the source of the problem as an outdated version of ERAccess renamed "sysdiagx.exe" located in an SIS directory folder (Program Files\SIS\DMS Communications Manager 9.9\).

19. The outdated, copied, and renamed version of ERAccess caused automatic log-offs because it was being run in the Windows system account. The Windows system account is a Microsoft Windows security feature that allows some programs to run "in the background" as part of the "system" while an individual PC user runs programs from a Windows user account. The outdated version of ERAccess copied and renamed sysdiagx.exe (like all versions of ERAccess) was designed to be run from a Windows user account. That version and subsequent ERAccess versions have automatic log-off features that rely on Windows' tracking "user activity" (i.e., keyboard use and mouse movements) to determine whether an individual user should be automatically logged off. Windows, however, does not track user activity for the system account as it does for Windows user accounts. Thus when the copied and renamed version of ERAccess was being run from the Windows system account, dealership employees using ERAccess from the Windows user account were being logged off prematurely and seemingly randomly because ERAccess' automatic log-off feature determined inactivity in the copied version of ERAccess being run in the Windows system account.

20. In November 2012, after further confirming its factual finding that a copied version of the older version of ERAccess was causing the auto log-offs, Reynolds implemented security enhancements designed to verify that dealers are running the current version of ERAccess, as is required by the Reynolds Customer Agreement. This had the effect of disabling integration via sysdiagx.exe. Since November, Reynolds has not implemented any additional new patches or security enhancements relating to SIS's hostile integration.

21. On December 26, 2012, SIS sent Reynolds' counsel a letter acknowledging the existence of sysdiagx.exe (nicknamed "the Patch" by SIS), but disclaiming any responsibility or knowledge regarding its creation. Reynolds' personnel ran a Google search with the search term "sysdiagx.exe" and located the file on a publicly accessible website sponsored and maintained by SIS ("uset.datadms.com"). After Reynolds filed its Amended Complaint, Reynolds personnel returned to the website and discovered that SIS had made the web site inaccessible.

22. A true, correct, and redacted copy of excerpts from the most recent version of the Reynolds Master Agreement is incorporated hereto and attached as Exhibit A-1.

23. A true, correct, and redacted copy of excerpts from the most recent version of the Reynolds Customer Guide is incorporated hereto and attached as Exhibit A-2.

24. A true, correct, and redacted copy of excerpts from the most recent version of the Defined Terms is incorporated hereto and attached as Exhibit A-3.

25. I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 25, 2013

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Kelly Hall

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